



# IN THE 5TH JUDICIAL CIRCUIT, BUCHANAN COUNTY, MISSOURI

Judge or Division: <b>DANIEL F KELLOGG</b>	Case Number: <b>20BU-CV02325</b>
Plaintiff/Petitioner: <b>KAYCE FISH</b>	Plaintiff's/Petitioner's Attorney/Address <b>JOSHUA PAUL WUNDERLICH</b> <b>5821 NW 72ND STREET</b> <b>KANSAS CITY, MO 64151</b>
Defendant/Respondent: <b>DIVERSICARE LEASING CORP</b>	Court Address: <b>BUCHANAN CO COURTHOUSE</b> <b>411 JULES ST</b> <b>SAINT JOSEPH, MO 64501</b>
Nature of Suit: <b>CC Other Tort</b>	<b>STATUS REVIEW HEARING DATE SET ON</b> <b>9-25-20 @ 8:30AM DIVISION 4</b>

(Date File Stamp)

## Summons in Civil Case

The State of Missouri to: **DIVERSICARE LEASING CORP**

Alias:

RA: CSC LAWYERS INC SERVICE  
221 BOLIVAR ST  
JEFFERSON CITY, MO 65101

COURT SEAL OF



BUCHANAN COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

Thursday, July 02, 2020

Date

/S/ THOMAS CASSITY

Clerk

Further Information:

### Sheriff's or Server's Return

**Note to serving officer:** Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with \_\_\_\_\_, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: \_\_\_\_\_ (name) \_\_\_\_\_ (title).
- ☐ other: \_\_\_\_\_

Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ (County/City of St. JOSEPH), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on \_\_\_\_\_ (date).

(Seal)

My commission expires: \_\_\_\_\_

Date

Notary Public

### Sheriff's Fees, if applicable

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$ \_\_\_\_\_ per mile)

**Total** \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

## IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI

KAYCE FISH,  
c/o Cornerstone Law Firm  
5821 NW 72<sup>nd</sup> Street  
Kansas City, MO 64151

Plaintiff,

v.

DIVERSICARE LEASING  
CORPORATION,  
*Registered Agent:*  
CSC-LAWYERS INCORPORATING  
SERVICE COMPANY  
221 Bolivar Street  
Jefferson City, MO 65101

Defendant.

Case No.: \_\_\_\_\_

Division: \_\_\_\_\_

## REQUEST FOR JURY TRIAL

**PETITION FOR DAMAGES**

COMES NOW Plaintiff Kayce Fish, by and through her attorney, and for her cause of action against Defendant Diversicare Leasing Corporation, alleges as follows:

**Parties and Jurisdiction**

1. This is an employment case based upon and arising under the Whistleblower Protection Act ("WPA"), Mo. Rev. Stat. § 285.575.
2. Plaintiff Kayce Fish (hereinafter "Plaintiff") is a citizen of the United States, domiciled in St. Joseph, Buchanan County, Missouri.
3. Defendant Diversicare Leasing Corporation (hereinafter "Diversicare") is a corporation organized under the laws of Tennessee with its principal place of business located at 1621 Galleria Boulevard, Brentwood, TN 37027.
4. Defendant Diversicare conducts substantial and continuous business in the State of Missouri.

5. At all relevant times, Plaintiff was employed by Diversicare at its facility located at 1616 Weisenborn Rd, St Joseph, MO 64507.

6. Diversicare employed six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

7. Diversicare is an employer within the meaning of the WPA.

8. Diversicare was at all relevant times subject to regulations promulgated by the Missouri Department of Mental Health.

9. This court has jurisdiction over the parties and subject matter of this action.

10. Venue is proper in Buchanan, Missouri, pursuant to MO. REV. STAT. § 508.010, as Plaintiff was first injured by the wrongful acts in the action therein.

**Additional Factual Allegations**

11. Plaintiff worked for Diversicare from approximately early July 2019 until her employment was terminated on September 27, 2019.

12. Plaintiff was employed as a certified nursing assistant ("CNA").

13. On September 20, 2019, an elderly patient (hereinafter "the patient") in the dementia unit fell and injured himself while Plaintiff was performing her duties in another area.

14. When the family member of another resident notified Diversicare staff of the incident, Plaintiff, along with other Diversicare staff members, immediately attempted to assist the patient.

15. Diversicare staff members notified the charge nurse that the patient had non-reactive eye movement and was bleeding from his head.

16. The charge nurse subsequently attempted to take patient's vitals but gave up after his lack of compliance, mentioning that she did not know what to do.

17. Staff members then called the Assistant Director of Nursing (hereinafter “the ADON”), who chose not to conduct a full assessment.

18. The ADON then improperly used a Hoyer lift to move the patient, despite his head injury, and as a result, the Hoyer lift fell on Plaintiff.

19. While giving a tour of the facility, the Director of Nursing (hereinafter “the DON”) noticed Plaintiff and the other Diversicare staff members attempting to assist the patient and asked, “You guys good?” without taking immediate action.

20. Paramedics subsequently arrived at the facility and observed the patient’s heart rate to be 45 beats per minute, and his blood pressure to be 90/30.

21. Plaintiff is of the information and belief that the patient passed away later that day at the hospital.

22. On September 21, 2019, Plaintiff informed another coworker of the previous day’s incident.

23. On September 23, 2019, Plaintiff reported the September 20, 2019 incident with the patient to the Missouri Department of Mental Health (hereinafter “the state”).

24. On September 24, 2019, Plaintiff was interviewed by an investigator from the state.

25. Immediately after Plaintiff’s interview with the state investigator, the ADON asked Plaintiff, “What did you say to them? They’re out to get us?”

26. Plaintiff then informed the ADON that she had told the truth, and that if the truth gets Diversicare in trouble, then they need to “fix things.”

27. On September 26, 2019, Plaintiff’s paycheck was for an amount approximately \$500 less than the amount to which Plaintiff was entitled.

28. When Plaintiff reported that she had been underpaid, Diversicare staff attempted to claim Plaintiff's hourly wage was \$10.35 per hour, rather than \$15.00, which was the amount that had been agreed upon when Plaintiff was hired.

29. When Plaintiff reported to the Diversicare staff member in charge of payroll that she would not work for Diversicare if she was not going to be paid properly, Plaintiff was told that if she felt the need to leave for this reason, she needed to speak with the charge nurse.

30. Plaintiff spoke with the charge nurse regarding the underpayment, and her desire to leave as a result.

31. The charge nurse told Plaintiff, "I don't blame you," in response to Plaintiff's concerns and instructed Plaintiff to contact another Diversicare employee to discuss the issue.

32. Plaintiff then left the facility, interpreting the charge nurse's response as permission to leave work for the day.

33. After Plaintiff left the facility, she received a text message informing her that the pay issue would be addressed.

34. On September 27, 2019, Plaintiff was terminated from her employment and was told that it was because she had left her shift the day before.

**COUNT I**  
**Violation under Mo. Rev. Stat. § 285.575**  
**Whistleblower Retaliation**

35. Plaintiff re-alleges and incorporates herein by reference, as though fully set forth herein, all of the above numbered paragraphs.

36. Plaintiff contacted the Missouri Department of Mental Health and reported that she had reasonable cause to believe that a consumer had been subject to the failure by Diversicare to provide reasonable or necessary services to maintain the consumer's physical or mental health and

that such failure presented imminent danger to the consumer's health, safety, or welfare, and cooperated in the subsequent investigation.

37. The state of Missouri has expressed a well-established and clear mandate of public policy that the state requires employees of organizations licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health to immediately report reasonable cause that a consumer has been subjected to abuse or neglect, and prohibits employers from dismissing or otherwise retaliating against an employee for making any report of actual suspected violations of consumer abuse or neglect. *See* 9 CSR 10-5.200.

38. Plaintiff reported to Diversicare that she objected to the sudden reduction of her wages without notification.

39. The state of Missouri has expressed a well-established and clear mandate of public policy that the state requires employers to pay an employee's wages as often as semimonthly, within sixteen days of the close of each payroll period, and requires employers desiring to reduce the wages of any of its employees to give such employees thirty days' notice of such reduction. *See* Mo. Rev. Stat. §§ 290.080, 290.100.

40. Plaintiff's report of suspected neglect or abuse to the Missouri Department of Mental Health, her participation in the subsequent investigation, and her objection to the sudden decrease in her wages constituted protected conduct under the WPA.

41. Defendant terminated Plaintiff's employment.

42. Plaintiff's participation in protected conduct was at least the motivating factor in the adverse actions taken against her.

43. At all times mentioned herein, before and after, the above described perpetrators were agents, servants, and employees of Diversicare, and were at all such times acting within the



scope and course of their agency and employment, and/or their actions were expressly authorized or ratified by Diversicare, thus making Diversicare liable for said actions under the doctrine of *respondeat superior*.

44. Diversicare failed to make good faith efforts to establish and enforce policies to prevent unlawful retaliation against its employees.

45. Diversicare failed to properly train or otherwise inform its supervisors and employees concerning their duties and obligations under applicable Missouri laws and regulations.

46. As shown by the foregoing, Plaintiff suffered intentional retaliation.

47. As a direct and proximate result of Diversicare's actions and/or omissions, Plaintiff has been deprived of income, as well as other monetary and non-monetary benefits.

48. As shown by the foregoing, Diversicare's conduct was willful, wanton, malicious, and showed complete indifference to or conscious disregard for the rights of others, including the rights of the Plaintiff.

49. Plaintiff is entitled to recover reasonable attorneys' fees from Diversicare pursuant to Mo. Rev. Stat. § 285.575.8.

WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and against Diversicare for economic damages, including but not limited to back-pay and lost benefits; for liquidated damages; for reasonable attorneys' fees and costs incurred herein; for pre- and post-judgment interest as allowed by law; and for such and further legal and equitable relief as the Court deems just and proper.

#### **Demand for Jury Trial**

Plaintiff requests a trial by jury on all counts and allegations of wrongful conduct alleged in this Complaint.

Respectfully Submitted,

CORNERSTONE LAW FIRM

By: 

M. Katherine Paulus MO BAR 60217

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Joshua P. Wunderlich MO BAR 64254

[j.wunderlich@cornerstonefirm.com](mailto:j.wunderlich@cornerstonefirm.com)

5821 NW 72nd Street

Kansas City, Missouri 64151

Telephone (816) 581-4040

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ATTORNEYS FOR PLAINTIFF



## IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI

KAYCE FISH

Plaintiff,

v.

DIVERSICARE LEASING  
CORPORATION

Defendant.

Case No.: 20BU-CV02325

**MOTION FOR APPROVAL AND APPOINTMENT OF PRIVATE PROCESS SERVER**

COMES NOW Plaintiff, Kayce Fish, by and through her attorney of record, and for her Motion for Approval/Appointment of Private Process Server, and requests that D&B Legal Services, Inc.: Legal Names (s):

Jamie Andrews PPS20-0009  
Caleb Battreal PPS20-0010  
Bernard Beletsky PPS20-0011  
Carrington Bell PPS20-0012  
Thomas Bogue PPS20-0013  
Brent Bohnhoff PPS20-0014  
Arthur Boyer PPS20-0015  
Scott Brady PPS20-0016  
Gary Brakemeyer PPS20-0017  
Jeff Brown PPS20-0018  
Hester Bryant PPS20-0019  
Nicholas Bull PPS20-0020  
Randy Burrow PPS20-0021  
Gory Burt PPS20-0022  
Kyle Carter PPS20-0023  
Michael Conklin PPS20-0024  
Lisa Corbett PPS20-0025  
Dennis Dahlberg PPS20-0026  
Mary Dahlberg PPS20-0027  
Bert Daniels JR PPS20-0028  
Richard Davis PPS20-0029  
Anthony Dice PPS20-0497  
David Dice PPS20-0030  
Maureen Dice PPS20-0031  
Norman Diggs PPS20-0032  
Edwina Ditmore PPS20-0033  
Marrissa Doan PPS20-0034  
Shawn Edwards PPS20-0035  
Tonya Elkins PPS20-0036  
William Ferrell PPS20-0037  
Robert Finley PPS20-0038

James Frago PPS20-0038  
John Frago PPS20-0039  
Kenneth Frechette II PPS20-0040  
Andrew Garza PPS20-0041  
Bradley Gordon PPS20-0042  
Thomas Gorgen PPS20-0043  
Tom Gorgone PPS20-0044  
Richard Gray PPS20-0045  
Charles Gunning PPS20-0046  
James Hannah PPS20-0047  
Rufus Harmon PPS20-0048  
James Harvey PPS20-0049  
Natalie Hawks PPS20-0050  
Douglas Hays PPS20-0051  
Stephen Heitz PPS20-0052  
Wendy Hilgenberg PPS20-0053  
James Hise PPS20-0054  
Gerald Hissam PPS20-0055  
William Hockersmith PPS20-0056  
Alex Holland PPS20-0057  
Mary Hurley PPS20-0058  
Betty Johnson PPS20-0059  
Edward Johnson PPS20-0060  
James Johnson PPS20-0061  
Etoya Jones PPS20-0062  
Patrick Jones PPS20-0063  
Derec Kelley PPS20-0064  
Brent Kirkhart PPS20-0065  
Janice Kirkhart PPS20-0066  
Tyler Kirkhart PPS20-0067  
Damon Lester PPS20-0068

Daniel Maglothin PPS20-0069  
Chad Maier PPS20-0070  
Kenneth Marshall PPS20-0071  
Deborah Martin PPS20-0072  
Michael Martin PPS20-0073  
Todd Martinson PPS20-0074  
Timothy McGarity PPS20-0075  
Casey McKee PPS20-0076  
Michael Meador PPS20-0077  
Kenny Medlin PPS20-0078  
Maria Meier PPS20-0079  
Thomas Melte PPS20-0080  
Matthew Millhollin PPS20-0081  
James Mitchell PPS20-0082  
Alexious Moehring PPS20-0083  
Jonathan Moehring PPS20-0084  
Jason Moody PPS20-0085  
Ronald Moore PPS20-0086  
Andrew Myers PPS20-0087  
Frederick Myers PPS20-0088  
James Myers PPS20-0089  
Stephanie Myers PPS20-0090  
Christopher New PPS20-0091  
Jeremy Nicholas PPS20-0092  
Michael Noble PPS20-0093  
Greg Noll PPS20-0094  
Robert O'Sullivan PPS20-0095  
Mike Perry PPS20-0096  
Bob Peters PPS20-0097  
Devin Pettenger PPS20-0098  
Carrie Pfeifer PPS20-0099

Craig Poesse PPS20-0159  
Bill Powell PPS20-0100  
Dee Powell PPS20-0101  
Samantha Powell PPS20-0102  
Kim Presler PPS20-0103  
Marcus Presler PPS20-0104  
Mark Rauss PPS20-0105  
Terri Richards PPS20-0106  
Jorge Rivera PPS20-0107  
Sammie Robinson PPS20-0108  
Richard Roth PPS20-0109  
Edna Russell PPS20-0110  
Brenda Schiwitz PPS20-0111  
Michael Siegel PPS20-214

Joe Sherrod PPS20-0112  
Andrew Sitzes PPS20-0113  
Laura Skinner PPS20-0114  
Thomas Skinner PPS20-0115  
Richard Skyles PPS20-0215  
Chris Stanton PPS20-0216  
William Steck PPS20-0116  
Randy Stone PPS20-0117  
Sonja Stone PPS20-0118  
David Taliaferro PPS20-0119  
Michael Taylor PPS20-0120  
Robert Torrey PPS20-0121  
Lucas Traugott PPS20-0122  
Steve Trueblood PPS20-0123

Jonathan Trumpower PPS20-0124  
Ryan Weekley PPS20-0125  
Misty Wege PPS20-0126  
Andrew Wheeler PPS20-0127  
Andrew Wickliffe PPS20-0128  
Norman Wiley PPS20-0129  
Gregory Willing PPS20-0130  
Conni Wilson PPS20-0131  
Jerry Wilson PPS20-0132  
Debra Woodhouse PPS20-0133  
Stan Yoder PPS20-0134  
Greg Zotta PPS20-0135  
Anthony Dice PPS20-0497

who are qualified persons to serve process, are not parties to the case and are not less than eighteen (18) years of age, as private process servers in the above cause to serve process in this case.

Respectfully Submitted,

CORNERSTONE LAW FIRM

By: 

M. Katherine Paulus MO BAR 60217

[m.paulus@cornerstonefirm.com](mailto:m.paulus@cornerstonefirm.com)

Joshua P. Wunderlich MO BAR 64254

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5821 NW 72nd Street

Kansas City, Missouri 64151

Telephone (816) 581-4040

Facsimile (816) 741-8889

ATTORNEYS FOR PLAINTIFF

*(Order on following page)*

**ORDER**

It is hereby ordered that the Plaintiff's Motion for Approval and Appointment of private process server is granted and the above-named individuals are hereby approved and appointed to serve process in the above-captioned matter.

Date: Thursday, July 02, 2020

**/S/ THOMAS CASSITY**

~~XXXXXX~~  
Judge or Clerk